STATE OF WISCONSIN
SUPREME COURT
Case No. 2021AP000511

In the matter of the mental commitment of D.D.G.:

OUTAGAMIE COUNTY,

Petitioner-Respondent,

v. Appeals Case No.:2021AP000511
Circuit Court Case No.:2017ME000034

D.D.G.,

Respondent-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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III. STATEMENT OF ISSUES

1. Is Wis. Stat. §51.20(1)(g)3. facially unconstitutional when a recommitment is based on Wis. Stat. § 51.20(1)(am)?

This issue was not presented to the circuit court or the court of appeals. Outagamie County will argue it is facially constitutional.

2. Was the order for involuntary medication and treatment properly entered?

The court of appeals affirmed the circuit court's order. Outagamie County agrees with the courts' decisions.

3. Did the circuit court and the court of appeals properly apply Wis. Stat. § 51.20(1)(am)?

The court of appeals affirmed the circuit court's order. Outagamie County agrees with the courts' decisions.

4. Was the evidence sufficient to extend Dana's[1] commitment?

The court of appeals affirmed the circuit court's order extending her commitment. Outagamie County agrees with the courts' decisions.

IV. CRITERIA FOR REVIEW

This case does not merit review by this Court. There is no real and significant question of either federal or state constitutional

[1] Pursuant to WIS. STAT. § 809.19(1)(g), D.D.G. will be referred to by the pseudonym Dana.

law at issue. It does not involve any policy within the authority of this Court. A decision is not needed to develop, clarify, or harmonize the law, as the issues presented involved well-established and unambiguous law. The decision of the court of appeals does not run astray of prior opinions of this Court or the court of appeals, or with controlling opinions of the United States Supreme Court.

Rather, the issues presented are issues recently addressed by this Court and sufficiency of the evidence arguments. Neither presents a special and important reason for this Court to grant review. Accordingly, Dana's Petition for Review should be denied.

V. STATEMENT OF FACTS

For purposes of this response, Outagamie County generally agrees with Dana's Statement of Facts, and supplements her statement with the following facts.

Dr. Bales stated he had been working with Dana for over one year and had met with her 10 or 12 times during that time. R.129-5:6. He had diagnosed her with schizophrenia, and provided the court with the circumstances surrounding Dana's initial detention in March 2017. R.129-6:8-7:3. He noted at that time of her emergency detention, "she was noted to have a history of several mental health problems then . . . to have deteriorated, to be delusional . . . that she had been putting paper in electrical outlets, and that was endangering of the residents." *Id.* "She would have little food in the apartment, she was not bathing properly, she was refusing voluntary treatment and she was not taking her medications." *Id.*

Dr. Bales noted that since that time, she has responded very well to treatment and was experiencing less symptoms because of the commitment. R.129-8:11-17. The doctor stated case management and psychotropic medications were crucial to the treatment of Dana's schizophrenia. R.129-8:23-9:2.

Dr. Bales stated he discussed the advantages, disadvantages, and alternatives to the medication with Dana "[e]very single appointment." R.129-9:22. However, Dr. Bales stated Dana "does not fully accept that she has a very severe mental illness" and "will tend to minimize or downplay the need to take any medication." R.129-10:1-15. Despite these regular discussions, Dr. Bales did not believe Dana was able to apply an understanding of the advantages, disadvantages, and alternatives to the medication to her illness to make an informed decision either to accept or refuse the medication and thus was not competent to refuse psychotropic medication. R.129-11:13-25. He also noted she was prescribed a medication for side effects of the medication, but that it was to be taken as needed and that he was unsure if she even took it because it was not necessary. R.129-10:19.

Dr. Bales opined Dana would be a proper subject for commitment under "Standard 3 or 4"if treatment were withdrawn. R.129-13:6, 21. He explained the dangerousness as being unable "to care for self properly and/or that you become so gravely disabled and so psychotic that you would do things like the electrical outlet and putting things in that and endangering others." R.129-13:7-11. He also opined she will "lose all the progress she has had" and become a proper subject for commitment. R.129-13:17-21. Dr. Bales noted Dana was "extremely stable right now with current treatment in place." R.129-14:23-24. But if treatment were withdrawn, he believed "she will stop her medication and she will become psychotic again, and she will self-neglect and she will not be able to maintain her apartment." R.129-16:7-10. Dr. Bales did not believe she would "take her medications on a voluntary basis" if treatment were withdrawn. *Id.*

Dr. Bales acknowledged on cross-examination that Dana had not exhibited any signs of dangerousness over the past year because of the treatment she was receiving, "emphasis, with treatment." R.129-20:20-21:2. However, he stated he had "the

very distinct impression, that she would not get the help she needed on a voluntary basis." R. 129-22:21-24.

Katie Chaganos testified next. She stated she had worked with Dana since June 2017 as her case manager through the Community Support Program for Outagamie County. R.129-26:14-15. She noted that although Dana has been on a commitment since 2017, she "had been on the radar for Outagamie County . . . all the way back until 2012, when we were starting to get reports from concerned citizens in the community, law enforcement, and other community providers in regards to her mental health." R.129-27:3-8. Katie also noted there had been concerns about Dana's "psychiatric stability" during that time. R.129-27:10.

Katie agreed with Dr. Bales's assessment that Dana's lack of insight into the need for treatment and medication. R.129-28:7-16. She noted that at "every single meeting that we have, she brings up her medication and the idea that she does not need the medication . . . she does not have any benefit from the medication . . . it really just highlights her lack of insight into her mental illness and the need for medication." *Id.* She stated, "[Dana] does not agree with the diagnosis, she denies that the schizophrenia diagnosis is accurate", and that there was no progress in assisting Dana with gaining insight and awareness into her mental illness. R.129-28:25-29:1, 9-11.

Katie testified she did not believe Dana would follow through with treatment if she were not on a commitment. R.129-32:22-33:15. As basis for this opinion, Katie referred to Dana's "verbal statements, denial of her diagnosis, denial that she needs medication, and starting to show non-compliance with her injection by being one week late for her last six injections." *Id.* Katie stated, "[t]o me that demonstrates that she has minimal insight into her mental illness and the need for medication and that she will decompensate to the point where she will become a proper subject for a commitment." *Id.*

Katie agreed Dana had not exhibited any signs of dangerous since 2017, but that her lack of insight into her diagnosis and need for treatment was concerning. R.129-33:20-24. She also noted Dana's "history of homelessness, not taking care of herself, and becoming paranoid and delusional" and that these things would recur if Dana were not on a commitment, "because we do not believe she would follow through with treatment." R.129-33:10-15. Katie believed it was necessary for the court to order extensions of both the commitment and medication orders. R.129-34:5-12.

Dr. Duggan testified next on Dana's behalf. R. 129-42. She stated she believed "[Dana] still demonstrates some lack of insight into her mental health condition." R.129-49:8-9, 50:10-11. She stated she spoke specifically with Dana about the schizophrenia diagnosis, and that "she didn't disagree, but she didn't agree, either." R.129-51:5-7.

Dana testified as the final witness. R. 129-55. On cross-examination, Corporation Counsel asked Dana, "Do you agree with the diagnosis of schizophrenia that has been given to you?" R.129-57:23-24. She responded, "Well, I'm working with it. I guess because I had seen competent, very competent psychiatrists and medical doctors, and they never said I had schizophrenia, so I'm adjusting to that." R.129-58:2-5. Dana stated she would continue treatment and the medications voluntarily, but did not state whether she agreed with the diagnosis of schizophrenia. R.129-59:19-60:12.

When Corporation Counsel directly asked her, "Do you agree that you have a diagnosis of schizophrenia today?", she commented about having been in the hospital three times for meningitis and that no prior doctors said she had schizophrenia. R.129-60:5-12. She went on to say, "So I'm not delusional, I don't hallucinate, I don't see things." *Id.*

Following the arguments of counsel, the court found Dana was dangerous to herself under the criteria set forth in both Wis. Stat.

§ 51.20(1)(a)2.c. and 2.d. extended Dana's commitment for 12 months. R.129-72:22-73:3. The court also entered an involuntary and medication order. R.129-72:1-6. The Court of Appeals affirmed these orders, and this Petition for Review follows.

VI. ARGUMENT

A. Wis. Stat. § 51.61(1)(g)3. is facially constitutional with used in tandem with § 51.20(1)(am).

This Court recently addressed the constitutionality of § 51.20(1)(am) in *Waupaca Cty. v. K.E.K. (In re K.E.K.)*, 2021 WI 9, 395 Wis. 2d 460, 954 N.W.2d 366, and determined the statute was facially constitutional. Similarly, this Court discussed the constitutionality of § 51.61(1)(g)3. as it relates to inmates vs. non-inmates under a commitment in *Winnebago Cty. v. C.S. (In re C.S.)*, 2020 WI 33, 391 Wis. 2d 35, 940 N.W.2d 875. Application of the findings in *C.S.* leads to a reasonable conclusion that § 51.61(1)(g)3. is constitutional when used in conjunction with § 51.20(1)(am).

Wisconsin Stat. § 51.61(1)(g)3. states that a person may be involuntarily medicated if the court finds either: (1) the individual is not competent to refuse medication, or (2) medication is necessary to prevent serious harm. In a recommitment proceeding under § 51.20(1)(am), a court must find an individual is dangerous under § 51.20(1)(a)1.-(2)a.-e., or, in the alternative, would become a proper subject for commitment under one of the five subsections if treatment were withdrawn. Thus, every recommitment hearing requires a finding of dangerousness and, as a result, satisfies the second prong of § 51.61(1)(g)3.

Although § 51.61(1)(g)3. only requires the court to find an involuntary medication order is necessary under one of the two prongs, a court can find an involuntary medication is necessary

under both prongs. Wis. State. § 51.61(1)(g)3. ("[U]nless the committing court . . . makes a determination, following a hearing, that the individual is not competent to refuse medication or treatment **or** unless a situation exists in which the medication or treatment is necessary to prevent serious physical harm to the individual or others.")(emphasis added). Thus, the court can find an individual to be both dangerous - as required in a recommitment proceeding - and not competent to refuse medication as the basis for an involuntary medication order. However, it is not required to make findings on both.

Dana is asking this Court to expand its decision in *C.S.* beyond inmates and find § 51.61(1)(g)3. is unconstitutional to all persons under a commitment. In *C.S.*, this Court determined that involuntarily medicating an inmate under § 51.61(1)(g)3. was unconstitutional when used in conjunction with § 51.20(1)(ar) when the order is not based a finding of dangerousness. *Id.* at ¶46. In its decision, this Court found an inmate committed under § 51.20(1)(ar) could be involuntarily medicated merely based on a finding that they are not competent to refuse medication, without a specific finding of dangerous. *Id.* at ¶20. This Court held, "[i]ncompetence to refuse medication alone is not an essential or overriding state interest and cannot justify involuntary medication." *Id.* at ¶46.

However, in its decision, the Court distinguished inmates from non-inmates when it noted, "[t]he relevant distinction is that the lawfully committed non-inmate has already been determined by a court to be dangerous." *Id.* Because the non-inmate committed under § 51.20(1)(am) has already been found to be dangerous, the involuntary medication order is not based solely on a finding of incompetence to refuse medication. Thus, applying the Court's reasoning and decision in *C.S.* leads to the reasonable and logical conclusion that § 51.61(1)(g)(3) is constitutional as applied to non-inmates committed under § 51.20(1)(am).

B. The lower courts properly applied the law to the facts of Dana's case.

The lower courts correctly applied the statutes and prevailing law to the evidence presented when determining her competency and dangerousness. Furthermore, the evidence was sufficient to support both a finding of incompetency and dangerousness. This is not an issue of misapplied law or any other issue that would have statewide impact to warrant review by this Court. Respectfully, the Court should deny the Petition for Review.

1. The lowers courts' determinations that Dana was not competent to refuse medication were well founded and based on applicable law.

In *Outagamie Cty. v. Melanie L. (In re Melanie L.)*, 2013 WI 67, 349 Wis. 2d 148, 833 N.W.2d 607, this Court analyzed the Wis. Stat. § 51.61(1)(g)4.b. phrase by phrase. In its analysis, the Court determined the phrase "applying an understanding of the advantages, disadvantages and alternatives [of the medication or treatment] to his or her mental illness" could be restated as "'applying an understanding' requires the person to *make a connection between* an expressed understanding of the benefits and risks of medication and the person's own mental illness." *Id.* at ¶71. Relying in part on this interpretation, the Court ultimately decided that the County did not meet its burden of showing Melanie was incompetent to refuse medication.

In its analysis of the case, the Court noted, "[t]he witnesses and the circuit court *repeatedly* acknowledged that Melanie was able to express an understanding of the advantages and disadvantages of the prescribed medication . . .". *Id.* at ¶90. The Court noted that Melanie's decision to not challenge her extension supported its inference that she recognized she had a mental illness. *Id.* Thus, the County could not prove by clear and convincing evidence that Melanie was not competent to refuse medication or treatment under § 51.61(1)(g)4.b. because it could not show she was not able "to make the connection between an expressed understanding of the benefits and risks of medication" and her mental illness. *Id.* at ¶96.

Conversely, every witness at the extension hearing testified Dana does not believe she has a mental illness. R.129-10:6-14, 24:19, 28:9-16, 30:1-13, 50:10-11, 51:2-7. Even Dana herself could not acknowledge her mental illness during her testimony. R.129-57:23-58:5, 60:2-10. If she cannot even accept she has a mental illness, it is not possible for her to make the connection between the expressed understanding of the benefits and risks of the medication and her mental illness. This makes her substantially incapable of applying an understanding of the advantages, disadvantages and alternatives of medication or treatment to her mental illness; thus, she is not competent to refuse medication or treatment.

Dana argues that this Court should grant her petition and create a rule that an individual's lack of insight into their mental illness does not render them incompetent to refuse medication. Pet'r's Pet. 23 ("Nothing in the statute requires, as a prerequisite to a finding of competency, that the person . . . conclusively admit they are in fact mentally ill."). While the County would agree nothing in the statute expressly states an admission is required, this Court's analysis of § 51.61(1)(g)b.4. in *Melanie L.* leads to the common-sense conclusion that one who does not accept they have a mental illness cannot make a connection between the medication and their mental illness. *Melanie L.*, 349 Wis. 2d at ¶72 ("It may be true that if a person cannot recognize that he or she has a mental illness, logically the person cannot establish a connection between his or her expressed understanding of the benefits and risks of medication and the person's own illness.").

This Court has previously stated, "when we have already authoritatively interpreted a statute, we are bound to follow that interpretation unless there is a special justification to depart from our earlier interpretation." *K.E.K.*, 395 Wis. 2d at ¶23; *See Johnson Controls, Inc. v. Emp'rs Ins. of Wausau*, 2003 WI 108, ¶94, 264 Wis. 2d 60, 665 N.W.2d 257. Because Dana does not provides special justification for this Court to reinterpret the

constitutionality of § 51.61(1)(g)4.b., this Court must follow its prior interpretation of the statute. *K.E.K.*, 395 Wis. 2d 460, ¶23.

2. The circuit court's decision to extend Dana's commitment met the statutory requirements for dangerousness.

Dana next argues that the evidence presented at the extension hearing was not sufficient. A review of the sufficiency of the evidence does not rise to the level of review by this Court and will have no impact beyond this case. Furthermore, the reviewing court accepts the inferences drawn from the evidence available to the circuit court as the trier of fact. *K.S. v. Winnebago Cty.*, 147 Wis. 2d 575, 578, 433 N.W.2d 291 (Ct. App. 1988). This Court defers to the circuit court's factual findings unless they are clearly erroneous. *See Phelps v. Physicians Ins. Co. of Wis., Inc.*, 2009 WI 74, ¶34, 349 Wis. 2d 1, 768 N.W.2d 615. Dana has failed to show the circuit court's findings were clearly erroneous and warrant review by this Court.

VII. CONCLUSION

In consideration of the foregoing arguments, Outagamie County respectfully requests this Court deny Dana's Petition for Review.

Respectfully submitted this 23rd day of February, 2022.

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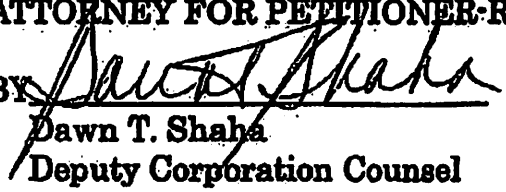
BY: 

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VIII. CERTIFICATION OF LENGTH

I certify that this Response to Petition for Review conforms with the rules contained in Wis. Stat. § 809.19 (8)(b)(bm)and(c) for a brief produced with proportional serif font. The length of this brief is two thousand eight hundred and ninety-nine (2,899) words.

Dated this 23rd day of February, 2022.

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IX. CERTIFICATION OF ELECTRONIC COPY
Wis. Stat. § 809.19(12)

I hereby certify that I have submitted an electronic copy of this Response to Petition for Review which complies with the requirements of Wis. Stat. § 809.19(12).

I further certify that the electronic Response to Petition for Review is identical in content and format to the printed form of the Response to Petition for Review filed on or before this date.

A copy of this certificate has been served with the paper copies of this Response to Petition for Review and filed with the court and served on all opposing parties.

Dated this 23rd day of February, 2022.

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X. CERTIFICATE OF MAILING

I certify that this Response to Petition for Review was deposited in the United States mail for delivery to the Clerk of the Supreme Court of Wisconsin by overnight mail on February 23, 2022. I further certify that the brief was correctly addressed and postage was pre-paid.

Dated this 23rd day of February, 2022.

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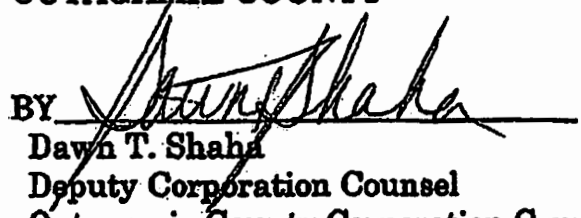
BY 
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